SUPREME COURT, U. S.

MAY 1 1967

JOHN F. DAVIS, CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1967

No. ~~1967~~ 116

In the Matter of the Estate of
DAVID SUPPLE,
also known as David Francis Supple,
Deceased.

TERENCE HALLINAN,
Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, a corporation sole, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of the
State of California

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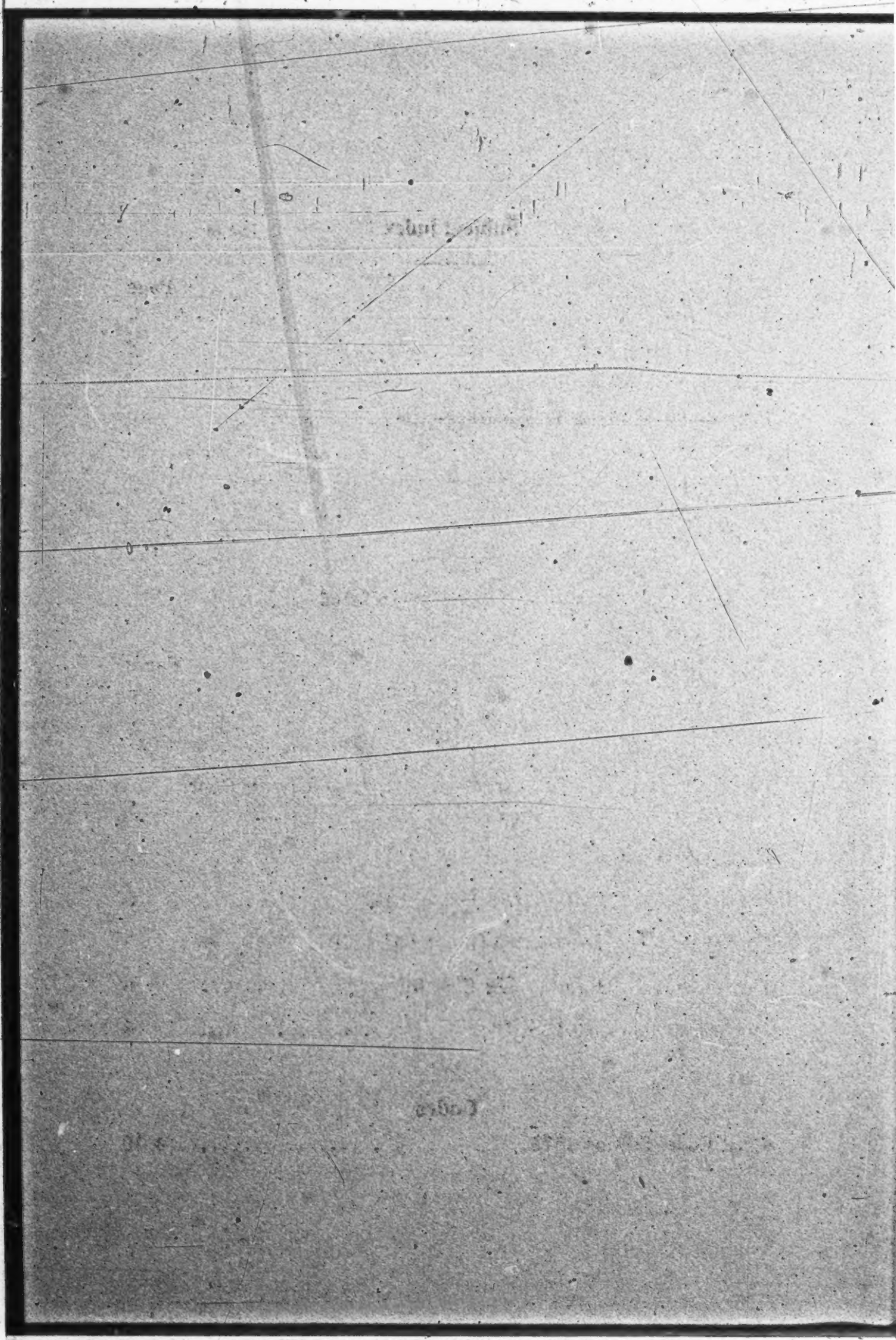

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Terence Hallinan, contestant in intervention of the alleged last will and testament of David Supple, prays

that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California and of the Court of Appeal of the State of California in the above matter. Plaintiff's contest having been dismissed by the Superior Court of such state, an appeal was timely taken to the Court of Appeal which affirmed the judgment of dismissal. A petition for a hearing by the State Supreme Court was denied on February 15, 1967. A copy of the opinion of the Court of Appeal is affixed hereto.

JURISDICTION

The jurisdiction of this Court is invoked under the Fifth and Fourteenth Amendments to the Constitution of the United States. The Federal questions involved were specifically reserved in all proceedings in the State courts.

QUESTIONS PRESENTED

1. Where a will is procured by fraudulent representations which also involve religious beliefs, is a court estopped to inquire into the truth or falsity of those representations?

2. Where a State Code prescribes two or more criteria for determining fraud, are the agents of a church entitled to the privilege that one of such criteria cannot be employed with regard to them because a religious doctrine is incidentally involved,

although that criterion is applicable to all other persons similarly situated?

STATEMENT OF ISSUES

The issues are set out in the opinion of the Court of Appeal of the State of California in the appendix to this petition. Judgment on the pleadings was rendered against the contestant.

Basically, his contest alleged that David Supple, the decedent, had been persuaded by fraud and undue influence exercised against him by agents of the Roman Catholic Church to leave his property to agencies of that organization.

The device employed was as follows: From his earliest childhood, these persons inculcated into him the belief that there resided in him an immaterial entity called a "soul"; that this entity would survive the death of his body and would continue in existence forever; that, upon his death, it would be transported to one of three realms, Heaven, a place of perpetual bliss, Hell, a place of perpetual torment, or Purgatory, a sort of halfway house from which it would ultimately graduate into Heaven;

He was further instructed that he could prevent the consignment to Hell or shorten the stay in Purgatory for both his own soul and that of his parents and sisters by leaving his estate to the Roman Catholic Church; that these representations played upon

the fears of a credulous and superstitious man and were the inducing cause of the execution of his will.

It need scarcely be argued to intelligent adults that all of the said representations are only childish superstitions without the least basis for belief in them. Nevertheless, the right to believe them, to advocate them, to persuade others to accept them, and to conduct oneself in accordance with them is guaranteed by the Constitution of the United States; however, it does not guarantee that they may be used to defraud one of his property or to induce testamentary dispositions.

Section 1572 of the Civil Code of the State of California provides in part as follows:

> "Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:
>
> 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
>
> 2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true."

The decision of the Court of Appeal, in effect, renders inoperative paragraph 2 of the foregoing section where a so-called religious belief is involved.

Freedom of religious belief has never been permitted to shield fraud. The First Amendment to the

Constitution of the United States forbidding Congress to make any "law respecting an establishment of religion or prohibiting the free exercise thereof" has been twisted into positions which would have astounded its authors, but it remains to be seen whether it can be distorted to sustain the position of the California courts in the present instance. In the leading case of *Cantwell v. Connecticut* (1940), 31 U.S. 296, this court made a distinction between "freedom to believe and freedom to act", stating:

> "The first is absolute but, in the nature of things, the second cannot be."

While holding that a requirement to procure a license to preach the doctrine involved was unconstitutional, the Supreme Court said:

> "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public."

The decision of the Court of Appeal depends chiefly upon a decision of this court in *United States v. Ballard* (1944), 322 U.S. 78. Decisions in that case are confusing and the present proceeding affords an opportunity to clarify them. The Ballards had founded a religious organization called "I Am". They claimed communication with some celestial beings who had transmitted to them secrets including the treatment of disease and they solicited funds to develop their organization. They were indicted for using the mails to defraud and convicted.

On the trial, the defendants demanded that the court submit to the jury the question of the truth or falsity of their beliefs. This, the court refused to do, but did submit to the jury the question of whether the defendants, honestly and in good faith, believed them. On appeal, the Circuit Court of Appeals held that the question of the truth or falsity of the doctrines should also have been submitted to the jury and reversed the judgment. (See *United States v. Ballard*, 138 F. 2d 540.) The appeal was then heard by the Supreme Court which sustained the action of the trial judge and remitted the matter to the Circuit Court of Appeals for further proceedings, since other points raised might have justified a reversal. It was, in fact, reversed on other grounds, and the defendants were convicted for the second time. On appeal from that judgment, it was reversed for failure to include women on the jury. (See *United States v. Ballard*, 329 U.S. 187.) Discussing the previous ruling, Justice Frankfurter contended that it had not decided whether such situations fell under the protection of the First Amendment, saying:

> "The case was remanded to the Circuit Court of Appeals without considering the question whether the First Amendment affords immunity from criminal prosecution for the procurement of money by false statements as to one's religious experiences. Three justices concluded that the verdict should stand and, in an opinion by the late Chief Justice, denied that the First Amendment afforded immunity for fraudulent use of the mails simply because the false statements concerned religious belief."

In *Cohen v. United States*, 297 Fed. 2d 760 (U.S. Circuit Court of Appeals, 9th Circuit, 1962), the court said:

> "The way of the confidence man would be easy if he could obtain money from the religious by wilfully false protestations of belief and then, when brought to book, take refuge in the First Amendment. We are cited to no case upholding Cohen's contention. U.S. v. Ballard, 322 U.S. 78, 64 Sup. Ct. 882, 88 L.Ed. 1148, does not. It does hold that the validity or veracity of a religious doctrine cannot be inquired into by a federal court, stating that 'the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents.' (322 U.S. page 88, 65 S.Ct. page 87.) It does not hold that the court or jury cannot decide that the profession or belief was fraudulent. What the District Court had submitted to the jury was:
>
> 'Did these defendants honestly and in good faith, believe these things?' "

The question which we wish submitted to the jury is this:

> "Were the positive assertions made to David Supple by the agents of the Roman Catholic Church, that bequests to that church would aid his soul to attain Heaven, warranted by the information possessed by the persons making those representations?"

Where personal and property rights have been involved, courts, including the Supreme Court of the

United States, have not been reluctant to brush aside arguments based upon religious freedom. In *Watson v. Jones,* 80 U.S. 79, the Supreme Court was called upon to pass upon the doctrine of the Southern Presbyterian Churches which went as follows:

> "The system of Negro slavery in the south is a divine institution and it is the peculiar mission of the southern church to conserve that institution."

Defining the limits within which exemption from inquiry protects the multiple faiths, creeds, and sects in the enormous variety of their philosophies and practices, the court stated:

> "The full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all."

It then knocked out the "religious principle" set forth above.

Similarly, courts have said to the Mormons:

> "You are quite free to believe in polygamy as a religious principle and even to advocate it as such, but you are not allowed to have more than one wife."

to the Dukhobors:

> "Your belief that it is necessary to 'stand naked before the Lord' will be protected, but you will not be permitted to parade nude on the public streets."

Seventh Day Adventists are required to close shop on Sundays and Jehovah's Witnesses are drafted into the Army in disregard of the ministerial dignity bestowed upon them in their own congregations.

In many civil and criminal cases, verdicts of fraud against spiritualist mediums, many involving wills, have been upheld on appeal. These usually involved the truth or falsity of revelations asserted to have come from the world of the hereafter. One such California case is *Bishop's Estate,* 2 Cal. 2d 132, 39 P. 2d 201. A Federal decision involving a similar situation is *Thompson v. Hawks,* 14 F. 902. That decision reads in part:

> "He embraced spiritualism as practiced by the spirit medium and, instead of merely believing in it as an abstract proposition, he became possessed by it and suffered it to dominate his life and override every other consideration. His belief in it was artfully used by the spirit medium—the only one, it appears whom he ever consulted—to alienate him from his only son and child and to get his property."

Surely, the equal protection of the laws forbids discrimination against such relatively small fry and in favor of the Leviathan Roman Catholic Church.

REASONS FOR GRANTING WRIT OF CERTIORARI

Certiorari should be granted in this case to resolve important Federal questions:

1. Where property rights have been violated by false representations, does the fact that the latter involve so-called religious beliefs prevent the courts from granting relief to the injured parties? In this connection, clarification should be made of such decisions as *U. S. v. Ballard* and *Cantwell v. Connecticut* (supra).

2. In passing upon charges of fraud, is the Roman Catholic Church exempt from the second subdivision of Section 1572 of the Civil Code of the State of California?

3. Are the State courts permitted to apply different standards to minor and major religious organizations?

CONCLUSION

For the reasons above set forth, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated, San Francisco, California,
April 12, 1967.

VINCENT HALLINAN,
Attorney for Petitioner.

(Appendix Follows)

Appendix

In the Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 23,453

In the Matter of the Estate of
DAVID SUPPLE,
also known as David Francis Supple,
Deceased.

THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, a corporation sole, et al.,
Petitioners and Respondents,

vs.

TERENCE HALLINAN,
Contestant in Intervention and Appellant.

OPINION

This is an appeal by Terence Hallinan, the intervener in a will contest, from a judgment on the pleadings.

John Smith, a grandnephew of the testator, filed a contest of the will of David Supple,[1] which thereto-

[1]The term "will" as used in this opinion refers to the will executed in 1958 and the two codicils executed in 1959 and 1960.

fore had been admitted to probate. The will left a substantial portion of Supple's estate to various charities affiliated with the Roman Catholic Church. Smith attacked the will upon the grounds that it was improperly executed, that the testator was not of sound and disposing mind or memory at the time of its making, and that his signature thereto was obtained by fraud and undue influence.

Thereafter Terence Hallinan, an assignee of one-quarter of Smith's interest in the Supple estate, filed a "contest in intervention" which attacked the will on the grounds of fraud and undue influence only. The Hallinan pleading, which was identical with the fraud and undue influence counts of the Smith pleading, enumerated the various charities (including schools, missions and religious orders and societies) which were named in the will, and alleged that all of them were agents, agencies and divisions of the Roman Catholic Church. It was further alleged that the testator had been a devout Roman Catholic from his earliest childhood until the time of his death and that the charitable beneficiaries named in the will had educated and instructed him continuously throughout his life, and in so doing had acted as agents for the Church and for each other. Allegedly the testator was taught that every human being has an immortal soul which can experience both pleasure and pain and which, upon the death of the body, is consigned either to Heaven, Hell, or Purgatory; that Heaven is a place of complete and eternal bliss; Hell is a place of complete and eternal torment, and Purgatory is a place

of temporary torment; that the consignment of a person's soul to one of these three regions is dependent upon the degree to which the person complied during his lifetime, with certain rules and commands which were prescribed by God but as to which the Roman Catholic Church, God's Vicar and representative on earth, has been appointed the depositary, interpreter and promulgator; that the soul of a person who dies while wilfully guilty of violating any important rule will be consigned to Hell and the soul of a person guilty of lesser derelictions will be consigned to Purgatory until his offenses shall have been expiated; that in order for a person's soul to enter Heaven, he must have faith and must also have performed certain good works, which may include the bestowal of gifts, legacies and devises upon the Church, and its divisions or agents; that as a reward for such good works, the priests and agents of the Church will recite prayers and perform ceremonials which will have the effect of facilitating the consignment of his soul to Heaven or shortening the period within which his soul, or that of another person whom he may designate, shall be required to spend in Purgatory. It was further alleged that the testator firmly believed all of the above representations and executed his will in reliance upon them and in the belief that the salvation of his soul and the souls of his predeceased relatives might be procured if he left the bulk of his estate to the Church and its agents, agencies and divisions. It was also alleged that all of the above representations were in fact false and untrue, consti-

tuting childish superstitions incompatible with man's advanced position in science and technology, and that the charitable beneficiaries who made these representations were guilty of unduly influencing the testator and were also guilty of fraud because they had made positive assertions which, although they believed them to be true, were not warranted by the information which they had (Civ. Code, §1572, subd. 2) and because they had breached a duty which, without an actually fraudulent intent, gained them an advantage by misleading the testator to his prejudice and the prejudice of his heirs at law (Civ. Code, §1573, subd. 1).

Certain of the charitable beneficiaries named in the will filed answers to the Smith pleading[2] and, in response to the fraud and undue influence allegations thereof, denied that they were agents, agencies or divisions of the Roman Catholic Church but admitted that they operated under the general auspices of said Church and that their members belonged to said Church. They also admitted, on information and belief, that the testator had been taught and educated in the doctrines and tenets of the Roman Catholic Church and that such doctrines included a belief in the immortality of the soul and in the existence of Heaven, Hell and Purgatory, although not as places existing in the visible universe. They further admitted that the Roman Catholic Church taught that Heaven

[2]Since the Hallinan pleading, as above noted, was identical with the fraud and undue influence counts of the Smith pleading, an answer to the Smith pleading is in practical effect an answer to the Hallinan pleading as well.

is reserved for the souls of persons free from mortal sin and Hell for the souls of persons guilty of such sin, and that a soul may attain salvation only through faith supplemented by good works, which may include the bestowal of gifts upon the Church or its divisions or agents. However, they denied that the Church taught that it could in any way help a soul consigned to Hell or that, as a reward for the bestowal of gifts, legacies and devises, the Church would recite prayers and perform ceremonials which would facilitate the consignment of the soul to Heaven or shorten the period which the soul might be required to spend in Purgatory.

In this state of the case, the beneficiaries under the will moved for judgment on the pleadings against Smith as to the fraud and undue influence counts of his pleading, and against Hallinan as to his entire pleading. On the same day, the beneficiaries also moved to strike the Hallinan pleading and the fraud and undue influence counts of the Smith pleading.

In due time the matter was heard and in ruling upon the matter, the court filed a memorandum opinion in which it stated that the gist of the fraud and undue influence counts of the two pleadings was that the charitable beneficiaries named in the will had influenced the making of the will by teaching the testator certain religious beliefs which were in fact untrue and which they had no reason to believe were true. The court concluded that the pleadings in question were fatally defective in that they contained no allegations to the effect that those responsible for

such teachings did not, in good faith, believe them to be true, that there was any special or concerted effort designed to influence the testamentary act, or that the testator was taught anything other than the usual teachings of the Roman Catholic Church. The court further noted that counsel for Hallinan had indicated that he had no desire to make any substantial change in the allegations of his contest in intervention.

The court granted the motion to strike the fraud and undue influence counts of the Smith pleading and granted judgment on the pleadings, without leave to amend, against Hallinan. A judgment dismissing the Hallinan pleading was entered on October 13, 1965, and he filed notice of appeal therefrom.[3]

The sole question before this court is whether the issues sought to be raised by appellant Hallinan's pleading are nonjusticiable because of their religious nature.

It is settled that inquiry into the truth or falsity of religious beliefs is foreclosed by constitutional guarantees of religious freedom and that the courts may ask only whether the proponent of a particular religion holds his beliefs honestly and in good faith,

---

[3]Although appellant makes some claim to the contrary, Smith is obviously not a party to this appeal. The judgment of October 13, 1965, is against Hallinan only, and an order striking one of several counts in a pleading is interlocutory and nonappealable and must be considered on appeal from the final judgment. (Hill v. Wrather (1958) 158 Cal. App. 2d 818, 821.) Although the notice of appeal is somewhat ambiguous in that it was filed on behalf of the "contestant" by the attorney who was representing both Smith and Hallinan, Smith obviously would not have appealed from a judgment which did not affect him, hence we assume that the "contestant" referred to is Hallinan.

(United States v. Ballard (1944) 322 U.S. 78; People v. Woody (1964) 61 Cal. 2d 716, 726.)

In the Ballard case, wherein respondents were charged with having fraudulently used the mails to promote certain novel and allegedly false religious doctrines, the court stated: "The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position." (United States v. Ballard, supra, at p. 87.)

An examination of appellant's "contest in intervention" reveals that all of the representations allegedly made to the testator were religious in nature and that it is nowhere alleged that respondents did not in fact believe them to be true. Although appellant's pleading does allege that respondent had insufficient information upon which to base their belief, this allegation merely challenges the reasonableness of respondents' beliefs and thus, by implication, the truth or scientific validity of such beliefs. Under the rule of the Ballard case, respondents had an absolute right to freely express any religious belief sincerely held and appellant is not entitled to defeat this constitutional right by showing that the particular belief was without demonstrable factual basis or, indeed,

was by its very nature one which few persons would be likely to espouse. Since the Hallinan pleading is devoid of any allegation relative to respondents' lack of honesty or good faith, it does not state a cause of action which is susceptible of proof within the limits of the First Amendment.

Appellant makes some attempt to contend, however, that the deficiences in his pleading were remedied by respondents' answers which denied that certain of the representations allegedly made to the testator were based upon any recognized doctrine or tenet of the Roman Catholic Church and thus, by inference, denied that such representations were believed by respondents. This argument cannot be upheld in the instant case.

Our research discloses only two California cases which have dealt with the question of whether an answer may be used to support a complaint in opposition to a defendant's motion for judgment on the pleadings. In Way v. Shaver (1906) 2 Cal. App. 650, the court held that certain defects in the complaint had been cured by the answer. In the later case of Hatch v. Draper (1943) 59 Cal. App. 2d 411, the court, without citing Way v. Shaver, reached a contrary result, but presumably did so because the trial court had dismissed the plaintiff's complaint only after he had been given leave to amend and had declined to do so. In 2 Witkin, California Procedure, Proceedings Without Trial, section 67, pages 1704-1705, the author comments upon the two cases and concludes "that, ordinarily, admissions in the answer

ought to be considered, either directly, or indirectly by giving the plaintiff an opportunity to amend the complaint in conformity therewith."

We note that the trial court's memorandum opinion and the judgment itself state that when the motion for judgment on the pleadings was argued, appellant's counsel indicated in open court that he had no desire to make any substantial change in the allegations of his pleading. Under the circumstances, appellant had ample opportunity to amend his pleading in conformity with respondents' answers but he declined to do so, with the result that he may not now contend that the defects in his pleading are cured by matters contained in said answers.

Judgment affirmed.

Shoemaker, P. J.

We concur:

Agee, J.

Taylor, J.

Filed December 21, 1966,
Lawrence R. Elkington, Clerk.